

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: COLUMBIA UNIVERSITY  
PATENT LITIGATION

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MDL NO. 1592

ORDER

WOLF, D.J.

October 4, 2004

It is hereby ORDERED that:

1. Columbia University shall, by 2:00 p.m. on October 5, 2004, report whether it is willing to extend its covenant not to sue plaintiffs under the '275 patent to cover any and all methods and processes used, and products made, used, offered for sale, sold or imported by plaintiffs until the conclusion of the reissue and reexamination proceedings concerning the '275 patent currently pending before the United States Patent and Trademark Office.

2. The parties shall be prepared to address at the October 6, 2004 hearing whether if an actual case or controversy still exists the court nevertheless has discretion concerning whether to decide the requests for declaratory judgments and, if so, how and why that discretion should be exercised. See EMC Corporation v. Norand Corporation, 89 F.3d 807, 813-15 (Fed. Cir. 1996); Davox Corp. v. Digital Systems International, Inc., 846 F.Supp. 144, 147-49 (D. Mass. 1993); South Boston Allied War Council v. City of Boston, 875 F.Supp. 891, 905-907 (D. Mass. 1995). If the parties find any additional cases addressing these issues,

particularly Federal Circuit cases, they shall inform the court as promptly as possible prior to the October 6, 2004 hearing.

/s/ Mark L. Wolf  
UNITED STATES DISTRICT JUDGE